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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BRYAN ANTHONY COOK,

12 Petitioner,

13 v.

14 CHRISTIAN PFEIFFER, Warden,

15 Respondent.
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NO. CV 18-9940-DSF (AGR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
MAGISTRATE JUDGE

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other
19 records on file herein, the Report and Recommendation of the United States
20 Magistrate Judge and the Objections. Further, the Court has engaged in a *de*
21 *novo* review of those portions of the Report and Recommendation (“Report”) to
22 which objections have been made. The Court accepts the findings and
23 recommendation of the Magistrate Judge.
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1 Petitioner objects to the Report's conclusion that he is not entitled to
2 equitable tolling. Construed liberally, Petitioner contends that his ignorance of the
3 law, low education level, and a score of 6.4 on the Test of Adult Basic Education
4 ("TABE") are extraordinary circumstances sufficient to warrant equitable tolling of
5 the one-year statute of limitations.¹ (Dkt. No. 11 at 2.) Petitioner also argued that
6 he exercised due diligence in light of his inability to find a jailhouse lawyer. (*Id.*)

7 Petitioner's claims are not well taken. As the Report noted, a pro se
8 petitioner's confusion or ignorance of the law alone is not by itself sufficient to
9 satisfy the equitable tolling standard. (Dkt. No. 8 at 7.) *Ford v. Pliler*, 590 F.3d
10 782, 789 (9th Cir. 2009) (citation and some quotation omitted).

11 Petitioner did not previously raise the issue of his 6.4 TABE score as a
12 basis for equitable tolling. Petitioner was able to request extensions of time to file
13 a habeas petition before this court in *Cook v. Unknown*, CV 15-3208-DSF (AGR)
14 (C.D. Cal. May 8, 2015) ("*Cook I*," Dkt. No. 1 at 1) and *Cook v. California*, CV 15-
15 3753-DSF (AGR) (C.D. Cal. June 1, 2015) ("*Cook II*," Dkt. No. 1 at 3). Moreover,
16 Petitioner has failed to establish how his educational level caused the untimely
17 filing. See *Glover v. Evans*, No. CV 08-2811-CJC (FFM), 2009 WL 783443, at *3
18 (C.D. Cal. Mar. 20, 2009) ("bare claim of illiteracy is inadequate to establish the
19 existence of an 'extraordinary circumstance'"; "alleged illiteracy is inadequate to
20 show that petitioner was prevented from timely filing"). In requesting additional
21 time to file a habeas petition, Petitioner stated that he was gathering information
22 to present his claims before this court. (*Cook II*, Dkt. No. 1 at 3). Petitioner did
23 not argue that he was unable to file a habeas petition with his grounds for relief
24 due to his educational level. The fact that Petitioner took time to gather additional
25 evidence is insufficient to warrant equitable tolling. See *Cruz v. Hedgpeth*, No.

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27 ¹ TABE scores reflect an inmate's educational achievement level and are
28 expressed in numbers reflecting grade level. *Nguyen v. Bartos*, 2012 U.S. Dist.
LEXIS 117460, *4, n.1 (E.D. Cal. Aug. 20, 2012).

1 SACV 10-01509-GW (VBK), 2012 WL 995283, at *7 (C.D. Cal. Feb. 27, 2012)
2 (“Equitable tolling is not available just because an investigator is attempting to
3 gather facts; rather, there must be an extraordinary circumstance justifying
4 equitable tolling.”), *report and recommendation adopted as modified by* 2012 WL
5 995004 (C.D. Cal. Mar. 21, 2012).

6 Petitioner’s argument that he was unable to find a jailhouse lawyer to assist
7 him for an unspecified period of time is similarly insufficient to demonstrate
8 equitable tolling. There is no indication that Petitioner pursued his rights diligently
9 as he does not explain what steps he took to find assistance and pursue his case
10 in the intervening time. *See Payne v. Paramo*, No. 2:15-CV-0211-TLN (KJN),
11 2015 WL 2389844, at *4 (E.D. Cal. May 19, 2015) (no equitable tolling based on
12 inadequate legal knowledge and inability to rely on jailhouse lawyers when
13 petitioner failed to show diligence and record suggested he did not seek inmate
14 assistance until “long after the limitations period had already expired”); *Diaz v.*
15 *Knowles*, No. CIV S-08-0403-LKK (GGH), 2009 WL 728567, at *1 (E.D. Cal.
16 Mar.19, 2009) (no equitable tolling based on inability to find jailhouse lawyer
17 when petitioner failed to show he acted diligently to obtain adequate assistance);
18 *see also Hernandez v. Miller*, No. EDCV 13-2266-PSG (JPR), 2014 WL 3055722,
19 at *5 (C.D. Cal. July 2, 2014).

20 IT THEREFORE IS ORDERED that judgment be entered denying the
21 Petition and dismissing this action with prejudice.

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23 DATED: June 10, 2019



DALE S. FISCHER
United States District Judge